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No. 226 2

Supreme Court of the United States

OCTOBER TERM, [redacted] 1961

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, a Federally Chartered Corporation,
Appellant,

vs.

WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, *Appellees.*

ON APPEAL FROM THE DISTRICT COURT FOR THE STATE OF ALASKA

STATEMENT AS TO JURISDICTION

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THE ARGUS PRESS, SEATTLE

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Supreme Court of the United States

OCTOBER TERM, 1959

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLAND RESERVE, a Federally Chartered Corporation, *Appellant*, vs. WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, *Appellees.*	No. .....

ON APPEAL FROM THE DISTRICT COURT FOR THE STATE OF ALASKA

STATEMENT AS TO JURISDICTION

Appellant appeals from a judgment of dismissal of its complaint for injunctive relief entered by the District Court for the State of Alaska, Division Number One, Juneau, Alaska, on July 1, 1959. This Jurisdictional Statement is submitted to show that: (1) the Supreme Court has appellate jurisdiction and (2) a substantial question is herewith presented under the rules of this court.

THE OPINION BELOW

The opinion of the court below was rendered July 1, 1959, and is unreported at this time. If eventually selected for reporting, it will be reported in 18 Alaska Reports. A copy of said opinion is included in the Appendix.

JURISDICTION

1. The suit of the appellant is one to enjoin the enforcement of certain Alaska criminal statutes (17 SLA 1959, 95 SLA 1959) which purport to make it a crime for appellant and its members to erect, moor and maintain floating fish traps at sites authorized and designated by the Secretary of the Interior in the waters of Alaska. Injunction is sought on the grounds that the Alaska penal statutes, as to the appellant, are in conflict with federal statutes and regulations (which have preempted the field) and that State laws concerning fishing within the boundaries of appellant's reservation have no applicability thereto.

2. The District Court for the State of Alaska, Division Number One, Juneau, Alaska, entered judgment dismissing the complaint of appellant on July 2, 1959.

Oral notice of appeal was entered on July 1, 1959, following the rendering of the opinion upon which the judgment was later entered. Notice of appeal to the Supreme Court of the United States was filed August 6, 1959, in the District Court for the State of Alaska, Division Number One, Juneau, Alaska.

3. The jurisdiction of the Supreme Court to hear this appeal rests upon 28 USC 1257 (1) and (2). The District Court of Alaska is the highest court of the State of Alaska in which a decision could be had. *The Coquitlam v. United States* (1896) 163 U.S. 346, 16 S.Ct. 1117, 41 L.ed. 184; *Lindeberg v. Howard* (CCA 9th 1906) 146 Fed. 467, CCA 23, 8 Ann. Cas. 709; Article XV, Section 17, Constitution of the State of Alaska. Although ap-

pellate review formerly could be had in the Court of Appeals for the Ninth Circuit, that court has decided it cannot take jurisdiction of cases decided by the District Court of Alaska after January 3, 1959. *Parker v. McCarrey,* No. 16,499 ..... F2 .....

4. The cases believed to sustain the jurisdiction of the Supreme Court are as follows:

Gully v. First National Bank (1936) 299 U.S. 109, 81 L.ed. 70, 57 S.Ct. 96;

Mallinckrodt Chemical Works v. Missouri, 238 U.S. 41, 59 L.ed. 1192;

New York ex rel. Bryant v. Zimmerman, 278 U.S. 63, 73 L.ed. 184.

5. The provisions of the statutes, orders and proclamations involved are lengthy; they are set forth in the Appendix. The citations are as follows:

43 Stat. 464, 48 USC 221 (1924)

43 Stat. 464, 48 USC 222 (1924)

72 Stat. 339 (1958)

67 Stat. 29, 43 USC 1301 (1953)

67 Stat. 29, 43 USC 1313 (a), (b)

Constitution of the State of Alaska, Article XII, Section 12

48 USC 358

Title 43, USC 141

Order of the Secretary of the Interior bearing date of February 11, 1915

Presidential Proclamation No. 1332, April 28, 1916

24 F.R. 2053, 2056, Section 102.10 and 115.26

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48 Stat. 935, 25 USC 465 (1934)
73 Stat. 141 (1959)
72 Stat. 545, 18 USC 1162
62 Stat. 757, 18 USC 1151

QUESTIONS PRESENTED

The questions presented by this appeal are as follows:

1. Is all authority to administer and manage the fish and wildlife resources of Alaska for the year 1959 reserved to the Federal Government by the terms of Section 6 (e) of the Alaska Statehood Act, 72 Stat. 339, so as to make the Alaska criminal statutes, 17 SLA 1959 as amended by 95 SLA 1959, unenforceable against the appellant by the State and its officials, and so as to make the regulations issued by the Secretary of the Interior (24 FR 2053 *et seq.*) March 7, 1959, allowing appellant to fish the trap sites therein designated a valid exercise of that authority?

2. If Section 6 (e) of the Alaska Statehood Act, 72 Stat. 339, does purport to reserve such control to the Federal Government and thereby render inapplicable the Alaska criminal statutes, does Section 6 (e) violate the "equal footing" doctrine governing the admission of new States to the Union?

3. Does the Alaska Statehood Act, 72 Stat. 339, in Section 4 thereof and in its adoption and ratification of the Alaska Constitution (in this instance specifically

Article XII, Section 12 thereof) comprehend a permanent disclaimer by the State of Alaska of control over Indian fishing within the State, and if so, is Section 4 of the Statehood Act an assumption of permanent jurisdiction (subject to further act of Congress) by the Federal Government over the location and manner of Indian fishing within the State, and further are the regulations issued by the Secretary of the Interior (24 FR 2053 *et seq.*) March 7, 1959, allowing appellant to fish the trap sites therein designated a valid exercise of that authority?

4. If the Alaska Statehood Act does so comprehend a permanent disclaimer by the State of Alaska and a permanent assumption of jurisdiction by the Federal Government, does it violate the "equal footing" doctrine governing the admission of new States to the Union?

5. Is the Alaska Statehood Act Congressional action of such a type, solely by virtue of its passage, as held by the District Court, that would eliminate and abolish that portion of the Annette Island Reserve (3000 feet of water surrounding the Island Reserve and the tidelands underlying said waters) which was established by Act of Congress (48 USC 358) in 1891, and vest title thereto, and the ownership thereof, in the State of Alaska?

6. Does the Secretary of the Interior derive his power to authorize reservation wards to fish on their reservation with designated gear and at designated locations pursuant to the provisions of the White Act (48

USC Section 221), as was held by the District Court, or does the Secretary of the Interior derive such powers from the Act of Congress establishing the Annette Island Reserve which entrusted to him the powers and duties of administering said wards (48 USC Section 358)?

7. Did the lower court err in inferentially holding that the Annette Island Reserve was not "Indian country" as defined in 18 USC Section 1151, and that, therefore, the provisions of 18 USC Section 1162 (1) were not applicable to the State of Alaska, and (2) Alaska could control and regulate by means of criminal prosecution, the fishing of the Indian wards within the boundaries of the Annette Island Reserve?

STATEMENT OF THE CASE

The Appellant Community is a federally-chartered corporation, situated within the boundaries of an Indian reservation which was created by Act of Congress in 1891 (48 USC 358); it encompassed the Annette Islands of the Alexander Archipelago in Southeastern Alaska. In 1916, by Presidential Proclamation No. 1332, the reservation was enlarged to include the waters to a distance of 3,000 feet from the shores of said islands at mean low tide in order to preserve and guarantee unto the reservation Indians a supply of fish and other acquatic products.

The Annette Island Cannery at Metlakatla is owned and operated by the appellant community; the cannery is the economic backbone of the reservation, inasmuch as salmon fishing is the only reservation industry of any

import. It packs the seine catch produced by the individual Indian fisherman; it packs the fish produced by reservation traps, the use of which has been approved at certain areas within the reservation waters by the Secretary of the Interior since at least 1915. Metlakatla has a population of approximately 1,000 people, almost all of whom, either as fishermen or cannery workers, make their livelihood from the fishing endeavor.

On July 7, 1958, Congress enacted the Alaska Statehood Act, 72 Stat. 339, under the terms of which the Alaska Constitution was ratified and affirmed. Under Section 4 of the Statehood Act, the State disclaimed all right and title to land and property which Congress reserved to the control of the United States, namely, "to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos or Aleuts. . . . " The Third Ordinance of the Constitution of Alaska abolished all use of fish traps in Alaska. Section 6 (e) of the Statehood Act withheld control of the Alaska fish and wildlife from Alaska until the Secretary of the Interior certified the transfer. In November, 1958, the Secretary of the Interior announced his intention to abolish fish traps in Alaska with the exception of native-owned traps. On February 25, 1959, and April 17, 1959, the legislature of Alaska enacted 17 SLA 1959 and 95 SLA 1959 making it a crime to erect, moor or maintain fish traps on or over lands or tidelands owned by the State of Alaska. On March 7, 1959, the Secretary of the Interior issued his 1959 fishing regulations for Alaska and authorized

appellant to use four (4) of its eight (8) trap sites for 1959. The Secretary of the Interior on March 10, 1959, advised appellant it could thus use its traps and could proceed to plan for the 1959 seasonal operation. On or about May 21, 1959, appellees publicly noted their intention to prevent appellant from operating its traps, and on or about June 1, 1959, appellees dispatched two patrol boats manned with armed officers of the State of Alaska to patrol near the trap sites of Kake and Angoon, other native villages whose fishing seasons opened earlier than that of appellant. On June 15, 1959, appellees caused the arrest of the President of the Council of the Village of Kake and the seizure of one of that community's fish traps. Appellees threatened to do likewise unto appellant. The appellant then sued to enjoin the enforcement of 17 SLA 1959 and 95 SLA 1959. The complaint alleged that the appellant would suffer irreparable harm, unless the appellees were restrained, for two reasons: (1) although a portion of the damages could be equated with money, the laws of Alaska prevent a suit for damages against appellees and (2) a large portion of the damages could not be equated with money. Appellant further alleged that it could not operate its cannery profitably without the use of fish traps, and that it would be forced to curtail drastically its operations, perhaps to the point of complete closure, thus causing loss of pre-season investment, loss of payroll to its members and ultimate destruction of the economy of Metlakatla and the Annette Island reserve. Appellant also alleged, *inter alia,* that the State of Alaska, lacking the statutory requirement

of ownership of lands or tidelands, could not enforce its criminal statutes against appellant or its members and that, in any event, the State of Alaska could not prosecute appellant and its members for violation of state fish and game laws, the prosecution of which would necessarily contravene the provisions of 18 USC 1162.

HOW THE FEDERAL QUESTION IS PRESENTED

Appellant based its suit on the grounds that exclusive control over the whole of the management of fish and wildlife in Alaska was reserved to the federal government for 1959, and that control over the Indian fishery was reserved to the federal government until further act of Congress; therefore, the Alaska criminal statutes were of no force and effect in view of the regulation of the Secretary of the Interior allowing appellant to fish its traps (Complaint, Tr. 12). The appellees filed a motion to dismiss appellant's complaint on the grounds it failed to state a cause of action (Tr. 41). Briefs were filed by appellant (Tr. 55) and appellees (Tr. 118), and hearing had. Upon completion thereof the District Court entered an order of dismissal of the complaint (Tr. 195) in accordance with its opinion that the Alaska criminal statutes involved were enforceable as to the appellant, that the Secretary of the Interior was without authority to allow the appellant to fish its four traps, and that the doctrine of "equal footing" gave Alaska, as a state, full control over all fishing within Alaska, federal statutes notwithstanding (Tr. 183).

In addition, appellant urged that the State of Alaska, lacking ownership of the reservation lands and tidelands, a statutory prerequisite to enforcement of its criminal statutes, could not arrest and prosecute appellant and its members (Tr. 72). Appellant likewise urged that the State of Alaska had no power to enforce its fish and game laws within the boundaries of an Indian reservation (Tr. 110). The lower court, by its decision, in effect, held that the Annette Island reserve was not "Indian Country" within the definition of 18 USC 1151 and 1162 and that, upon passage of the Statehood Act, title to the waters within the reservation and the lands thereunder vested in the new state, thus, inferentially at least, obliterating a goodly portion of the reservation (Tr. 186).

Appellant gave oral notice of appeal and thereafter filed an application for a preliminary injunction pending appeal in the Supreme Court of the United States. The injunction was granted pending filing and determination of this appeal.

THE QUESTIONS ARE SUBSTANTIAL

This appeal involves the immediate question of whether or not the appellant can fish with fish traps in Alaska when authorized so to do by the laws of the United States and when prohibited from so doing by the laws of Alaska. The resolution of this question, however, goes further and raises issues of vital importance to the future Federal-State relationships in the field of control of fish and wildlife and in the field of control of Indian welfare, especially as concerns Indian

reservations. Appellant rests its claim to fish its traps on an assertion that the federal government has exclusive power not only to provide for Indian welfare but also to exercise control over fish and wildlife of the State in providing for Indian welfare; in addition, appellant has urged that state fish and game laws, as applied to Indian country, must bow if they conflict with federal legislation on the subject. These claims have been denied by the District Court of the State of Alaska on the grounds that the Constitutional right of the State of Alaska to be admitted into the Union "on equal footing" with the other States would be infringed upon if the State were denied the right of exclusive control over its fish and wildlife and on the ground that title to a portion of the reservation of the appellant vested in the State of Alaska upon passage of the Statehood Act. The frustration of federal control over the Indian which would result from State control in this instance was not given much, if any, weight by the lower Court. The claims of right of the appellant are based directly upon the language of the Alaska Statehood Act, 72 Stat. 339, the regulations of the Secretary of the Interior issued thereunder, 24 CFR 2053-2059, 48 USC 358, the Act of 1891 which created the Annette Island reserve, and 18 USC 1151 and 1162. The language in the Statehood Act has never before been utilized in Statehood legislation; no factual background identical to ours has ever been discovered in litigation involving interpretation of statehood legislation. The far-reaching case of *Coyle v. Smith,* 221 U.S. 559, 55 L.ed. 853, and all subsequent equal footing cases whose

decisions rest thereupon, do not now foreclose inquiry into the subject issues.

Appellant seeks to restrain the enforcement of the criminal statutes of the State of Alaska. Application for injunctive relief is based upon the claim that unless the appellees are restrained, appellant will suffer irreparable harm through seizure of its equipment, loss of profits, imprisonment of its employees, loss of payroll to its members and a general emasculation of its economy, for which no action at law lies against appellees under the laws of Alaska or for which money damages would be an adequate remedy for the loss. Circumstances such as these warrant the issuance of an injunction to prevent the enforcement of the State criminal statutes involved. *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 69 S.Ct. 968 (1949). Appellant's right of fishery is a property right entitled to injunctive protection, *Hynes v. Grimes Packing Co., supra.*

The Alaska Statehood Act, 72 Stat. 339, expresses a congressional intent to withhold control of the fish and wildlife resources within Alaska from the State of Alaska for the year 1959, and also to withhold such control as is necessary to allow the federal government to exercise exclusive control over Indian fishing in Alaska until such time as Congress releases that control to the State. The Act, of course, further seeks to safeguard Indian fishing rights and property rights, title to which is vested in the Indians or in the United States as Trustees for them.

Section 6(e) of the Statehood Act expressly denies to

Alaska any power of control over its fish and wildlife until certain conditions are met in "the broad national interest." The time limit therein expressed has since been defined, and federal control will cease on January 1, 1960. Congress has exercised absolute control over the fish and wildlife in Alaska since it was acquired as a Territory, and in that exercise has delegated supervision to the Secretary of the Interior under the White Act, 43 Stat. 464, 48 USC 221 (1924). Pursuant to that legislation and to the Reservation Act of 1891 (48 USC 358), the Secretary of the Interior has issued regulations from year to year governing the taking of salmon in Alaska. A violation of the regulations invokes the sanctions of the White Act, including fines, imprisonment, and seizure of equipment. The Secretary issued his 1959 regulations on or about March 7, 1959, 24 CFR 2053-2059, and therein expressly allowed appellant to fish certain traps, at the same time prescribing complete regulations for the taking of salmon in Alaska for the year 1959. Under these circumstances, no criminal statute of Alaska could have any force and effect in regulating the manner in which appellant shall fish or the gear it can utilize in the waters of Alaska this year.

Section 4 of the Statehood Act comprehends a complete reservation of control by Congress by the Federal government over Indian fishing in Alaska. This section expressly reserves to federal control "any lands or other property (including fishing rights) the right or title to which may be held by any Indians, Eskimos, or Aleuts * * * or is held by the United States in trust for said natives * * * ." Considerable speculation has been

voiced by appellees as to the intent of this section. However, the language is certainly lucid enough to indicate that Indian fishing is not to be controlled by the State until Congress otherwise directs. Similar language appears in Article XII of Section 12 of the Alaska Constitution, which is made a part of the Alaska Statehood Act by the ratification thereof in its preamble. The fact that appellant was exercising a fishing right through the use of fish traps owned by the United States, and on waters and over tidelands owned by the United States, as trustee, at the time Section 4 was enacted, does much to suggest the language of Section 4 was tailored to cover that very situation. The record is clear that the Secretary of the Interior interpreted this section of the Statehood Act to allow the appellant to continue fishing as it had in the past, subject to his regulations. This interpretation is entitled to great weight in determining what Congress intended by Section 4, if there is any ambiguity existing in the statute. *Fawcus Machine Co. v. U.S.* 282, U.S. 375.

Appellees have urged that no matter what control is withheld from Alaska by Section 6(e) or Section 4 of the Statehood Act, the Secretary of the Interior cannot specially allow the appellant to fish its traps and deny all others that right, because such action violates the White Act prohibition against the grant of an exclusive fishery by the Secretary, 43 Stat. 464, 48 USC 222. Section 4 of the Statehood Act, however, by providing specially for Indian fishing under Federal control, must be considered to have amended the White Act to that

extent. Section 6(e) declares that administration for 1959 by the Secretary must be "under existing laws." The preamble to the Statehood Act makes the Constitution of Alaska "existing law," and in so doing brings into play the language of Article XII, Section 12 of the Constitution of the State of Alaska, which also provides specially for Indian fishing, and to that extent the White Act is likewise amended, if only for the year 1959.

Congress has the right either to withhold complete control of the fish and wildlife in Alaska for the State of Alaska or to withhold such control as it deems necessary to provide for the welfare of the Indian. Neither type of withholding violates the "equal footing" doctrine. As to the Indian alone, the exclusive right of the Federal government to exercise control thereover has long been recognized as the exercise of the Constitutional power given the Federal government, and has not been considered a violation of the doctrine of "equal footing." The welfare of the Indian is not something peculiarly within the sovereignty of a State. *Coyle v. Smith, supra; U.S. v. Sandoval,* 231 U.S. 34, 58 L.ed. 107; *U.S. v. Chavez,* 290 U.S. 357. As to the complete control of fish and wildlife, the question has not been heretofore squarely presented to this Court. However, *Coyle v. Smith* clearly involves political rights in connection with "equal footing," as opposed to property rights. Regulation and management of fish and wildlife suggests a problem in property rather than in politics. The decisions of this Court in *Manchester v. Massachusetts,* 139 U.S. 240, 35 L.ed. 159, and *Skiriotes*

v. Florida, 313 U.S. 69, upholding State control of fish and wildlife, with special emphasis on the absence of conflicting federal legislation in each instance, likewise suggest that this is a field for Federal control if Congress elects to enter it.

The nature of this case and the rulings of the District Court of the State of Alaska are such as to bring the case within the jurisdictional provisions noted in Title 28 and the cases hereinbefore cited to sustain the jurisdiction. Appellant filed its case in the District Court of the State of Alaska, which is the highest court in the State of Alaska. Its complaint was based upon a right to fish certain traps pursuant to express allowance by the laws of the United States, namely, 72 Stat. 339, Section 4, the regulations of the Secretary of the Interior, 24 CFR 2053-2059, the Reservation Act, 48 USC 358, and presidential Proclamation No. 1332. Appellant's rights under the laws of the United States were thus made an essential element of its cause of action and brought the case within 28 USC 1257 (1) and (2). *Gully v. First National Bank* (1936) 299 U.S. 109, 81 L.ed. 70, 57 S.Ct. 96. The opinion of the Court that the Federal laws upon which appellant relied violated the "equal footing" doctrine, and for that reason were of no force and effect against conflicting Alaska law, also brings the case within the jurisdictional provisions of Title 28. *Mallinckrodt Chemical Works v. Missouri,* 238 U.S. 41, 59 L.ed. 1192; *New York, ex rel. Bryant v. Zimmerman,* 278 U.S. 63, 73 L.ed. 184.

It is submitted that the decision of the District Court

of the State of Alaska fails to recognize the supremacy of congressional enactments in this regard over conflicting State law. In so doing, it authorizes the State of Alaska to interfere with the exercise of Indian fishing in violation of the laws of the United States. We believe that the questions presented by this appeal are substantial and that they are of public importance. Finally, we cannot believe, as the lower Court inferentially held, that the Statehood Act, solely by virtue of its passage, obliterated a substantial portion of an Indian reservation and not only divested the United States of title thereto (held by the United States as trustee since 1891) but also vested title thereto in and to the State of Alaska.

Respectfully submitted,

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APPENDIX 1

OPINION OF THE DISTRICT COURT FOR THE STATE OF ALASKA

IN THE DISTRICT COURT FOR THE DISTRICT OF ALASKA
DIVISION NUMBER ONE, AT JUNEAU

ORGANIZED VILLAGE OF KAKE, *Plaintiff*, vs. WILLIAM A. EGAN, Governor of the State of Alaska, *Defendant.*	Civil Action No. 8063-A
ANGOON COMMUNITY ASSOCIATION, *Plaintiff*, vs. WILLIAM A. EGAN, Governor of the State of Alaska, *Defendant.*	Civil Action No. 8064-A

and

METLAKATLA INDIAN COMMUNITY, ANNETTE ISLANDS RESERVE, a federally chartered corporation, *Plaintiff*, vs. WILLIAM A. EGAN, Governor of the State of Alaska, and THE STATE OF ALASKA, *Defendants.*	Civil Action No. 8066-A

OPINION

Filed July 1, 1959

R. L. JERNBERG, of Gore & Jernberg, Ketchikan, and C. L. CLOUDY, of Ziegler, Ziegler & Cloudy, Ketchikan, for plaintiffs Organized Village of Kake and Angoon Community Association.

ROBERT H. ZIEGLER, SR., and A. H. ZIEGLER, of Ziegler, Ziegler & Cloudy, Ketchikan, for plaintiff Metlakatla Indian Community, Annette Islands Reserve.

JOHN L. RADER, Attorney General of Alaska, JAMES M. FITZGERALD, Special Assistant Attorney General, and DOUGLAS L. GREGG, Assistant Attorney General, for defendants.

KELLY, Judge.

The first two captioned cases were consolidated for trial, and the third was heard the following day. Because of the similarity of the actions, the three cases are consolidated for the purpose of this opinion.

The urgency of this matter makes immediate determination imperative. It would, of course, be desirable if my decision could be based on a written opinion as complete as the able briefs of counsel for both parties filed herein, but time does not permit the preparation of a formal opinion, so it must suffice that I announce my decision from the bench and do as well as possible from notes and excerpts from decisions.

I need hardly state that I agree with counsel on both sides in their expressed regard for the importance of this action now before us for decision.

We have here a conflict between the authority of the Secretary of the Interior, an officer of the United States, and the Governor of Alaska. In this it is not a conflict of these officials as individuals or personalities, but of what they represent in this controversy.

We have in effect the state opposed to the United States.

We have the majesty of the nation on one hand and the sovereignty of the state on the other; in between, three Indian communities whose plight in the dwindling fish economy of Alaska is a matter of grave concern.

Where the exercise of claimed state power and authority collides with the exercise of claimed federal power and authority, the difficult and tender problem of resolving, under existing law and judicial decisions, the questions thus arising, with due regard to the dignity of the one and the sovereignty of the other, becomes the delicate task of the Court.

Able and convincing arguments have been capably presented by counsel for both sides.

The facts are substantially agreed upon and are fully set forth in the pleadings, briefs and recorded statements of counsel.

After reading the pleadings and briefs, hearing the arguments, examining the exhibits and affidavits, and studying numerous authorities, I have concluded that the relief sought in these three cases must be denied and the bills of complaint therein dismissed.

I will try and state my reasons for this decision.

This Court can take judicial notice of the following facts and conditions and matters of general knowledge:

(1) There has long been growing opposition to fish traps in Alaska, and plebiscites held in the Territory in connection therewith have resulted overwhelmingly in votes for the abolishment of traps.

(2) The three Indian villages here concerned as plaintiffs in these actions had voted overwhelmingly for the abolishment of traps.

(3) The salmon runs in Alaska are being rapidly depleted.

(4) The use of fish traps takes great numbers of fish from Alaskan waters for the benefit of the few who own or control the traps.

(5) Even with trap operations, many canneries have been compelled to close in Alaska in recent years, because of lack of an adequate fish supply.

(6) Traps were reduced over the years in number and curtailed in operation, and finally abolished by the state, the well-known purpose of which was to conserve the salmon supply for the benefit of all of the people of the state as a whole.

(7) Financial loss occurred to some who owned or controlled the traps each time they were cut in number or limited in operation.

I find the following statements of the law determinative of the issues in this case. The state owns the tidelands and controls all areas wherein traps were threatened to be installed. In other words, the proposed trap sites are located in inland waters over which the State of Alaska has dominion.

Mr. Justice Reed, in *Alabama v. Texas et al.*, 347 U.S. 272 at page 275, stated:

"If the marginal lands were thus declared by the *California* and following cases to belong to the United States, they were ceded to the states through the subsequent Submerged Land Act of 1953 by the clause: 'Title to and ownership of the

> lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters . . . are hereby . . . recognized, confirmed, established, and vested in and assigned to the respective States . . ." Sec. 3(a). If, on the other hand, the marginal lands were not declared by those cases to belong to the United States, title to them remained in the respective states. Either by original ownership or by the cession of the Act, the lands are now the property of the respective states . . .

The new State of Alaska is entitled to such powers as have been given to all states by the Submerged Lands Act.

Indian fishing rights do not include the right to fish with forbidden gear or in a manner prohibited to other citizens of the state.

No property right exists in fish traps and their use has been legally prohibited in the state.

The "equal footing" clause has long been held to refer to political rights and to sovereignty and to have a direct effect on certain property rights, and the question arose early in controversies between the states and the federal government as to ownership of the shores of navigable waters, and it was held that to deny to the states, admitted subsequent to the formation of the union, ownership of this property, would deny them admission on an equal footing with the original states. *Pollard's Lessee v. Hagan,* 44 U.S. 212, 228-229 and cases cited.

Upon the admission of a state to the Union the title

of the United States to lands underlying navigable waters within the state passes to it as incident to the transfer to the state of local sovereignty and is subject only to the paramount power of the United States to control such waters for purposes of navigation in interstate and foreign commerce. *United States v. Oregon,* 295 U.S. 1, 14.

The lands on which the fish traps are to be moored are tidelands or lands underlying inland waters, and subject to the authority of the state to regulate fishing.

Of course the United States has responsibility under laws passed by Congress toward the Indians. The United States has made treaties—solemn pacts with Indian nations. Indians have been accorded rights by the United States in Territories and in lands controlled by the United States, but many of these rights disappear when a new state is formed. *Ward v. Race Horse,* 163 U.S. 504. In this case, on page 514, Mr. Justice White stated as follows:

> " * * * It may be further, for the sake of the argument, conceded that where there are rights created by Congress, during the existence of a Territory, which are of such a nature as to imply their perpetuity, and the consequent purpose of Congress to continue them in the State, after its admission, such continuation will, as a matter of construction, be upheld, although the enabling act does not expressly so direct. Here the nature of the right created gives rise to no such implication of continuance, since, by its terms, it shows that the burden imposed on the Territory was essentially perishable and intended to be of a limited duration.* * * "

See also *Kennedy v. Becker,* 241 U.S. 556; *U.S. v. Winans,* 198 U.S. 371 (384). An Indian reservation created by executive order of the President conveys no right of use or occupancy beyond the pleasure of Congress and the President.

When an Indian reservation is established by treaty the right of use or occupancy depends upon the language or the purpose expressed therein.

Congress has power to make a reservation inclusive of the adjacent waters and submerged lands as well as uplands * * *. The reservation thus created is not a private grant but simply a setting apart until otherwise provided by law.

Statutes passed for the benefit of dependent Indian tribes or communities are to be liberally construed, doubtful expressions being resolved in favor of the Indians. (See *Alaska-Pacific Fisheries v. United States,* 248 U.S. 78, pages 87 and 89.)

The reservation of the Metlakatla Indians was created at the will of Congress and did not constitute final disposal of the lands underlying the navigable waters. The extension of the 3,000 feet to include exclusive fishing rights by the President likewise did not constitute final disposal but only a grant until otherwise provided by law. The federal government retained jurisdiction thereof until Alaska became a state but upon achieving statehood, dominion and sovereignty thereof passed to the new state, subject only to the authority of the federal government in regulating navigation and commerce. *Pollard's Lessee v. Hagan,* 44 U.S. 212. The

presidential order which extended the exclusive fishing rights 3,000 feet offshore simply prohibited others from fishing therein and cannot be construed to permit the use of traps therein when prohibited by state law.

Under territorial status the Annette Island natives could not claim any vested property right in any particular method or means for taking fish. Their authority to operate a fishery at all came from the Secretary of the Interior under the provisions of the White Act.

The state regulates and controls wildlife resources and fisheries in the marginal sea. This was originally based on a concept of ownership. (*McCready v. Virginia,* 94 U.S. 391). This theory has to some extent been repudiated and the modern concept contemplates that state control is founded upon the power to regulate in the state the protection of these resources for all the people.

The state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of the people.

Geer v. Connecticut, 161 U.S. 519. See also
Skiriotes v. Florida, 313 U.S. 69;
Toomer v. Witsell, 334 U.S. 385;
Corsa v. Tawes, 149 Fed. Supp. 771.

The right to control fisheries rests in the state in the absence of affirmative action of Congress. *Manchester v. Mass.,* 139 U.S. 240.

Fish and game are owned by the states, not as proprietors, but in their sovereign capacity as the repre-

sentatives and for the benefit of all their people in common. *U.S. v. Shawver,* 214 Fed. 154.

The White Act, 48 USC Sec. 221, was passed by Congress to protect and conserve fisheries in Alaska. It was amended by Sec. 6 (e) of the Alaska Statehood Act, which contained the so-called Westland proviso. The constitution of the State of Alaska became effective simultaneously with the Statehood Act, and with it Ordinance Number Three, which for reasons therein stated, abolished the use of fish traps for the taking of salmon for commercial purposes in all the coastal waters of the State.

If the White Act is amended by Sec. 6 (e) and by Ordinance Number Three as interpreted by the Secretary of the Interior (*Ketchikan Packing Co. v. Seaton,* opinion filed May 14, 1959, United States Court of Appeals for the District of Columbia) then the White Act must prohibit the use of traps in Alaskan waters.

The *Ketchikan Packing* case holds that Congress intended the Secretary to be a trustee for both the federal government and the new state during the transition of administration from the federal to the state authorities in the broad national interest. It further held that the Secretary, in that unique capacity, could not reasonably disregard a valid law of Alaska existing on January 3, 1959, the effective date of the Alaska Statehood Act and the Alaska constitution, and Ordinance Number Three.

The authority conferred upon the Secretary by existing law, as above set forth, should not be permitted

to impair the powers or rights of the new state which come from the status of statehood. To do otherwise would seem to impair the equal footing standing of the new state.

The White Act is still in effect and is the Act from which the Secretary of the Interior derived his authority, and this Act specifically states that every such regulation made by the Secretary of the Interior shall be of general application within the particular area to which it applies and that no exclusive or several right of fishery shall be granted therein. Therefore the White Act forbids exclusive right of fishery. This was the holding in the case of *Hynes v. Grimes Packing Co.*, 337 U.S. 86, at page 122:

> As Sec. 208.23 (r) with its exception in favor of the natives in possession of Karluk Reservation and their licensees is based upon Sec. 1 of the White Act, we think it clear that its proviso that no exclusive or several right of fishery shall be granted therein applies to commercial fishing by natives equally with fishing companies, nonresidents of Alaska or other American citizens and so applies whether those natives are or are not residents on a reservation. We find nothing in the White Act that authorizes the Secretary of the Interior to grant reservation occupants the privilege of exclusive commercial fishing rights * * * The White Act fishing preserves were not intended to furnish a monopoly to a favored few.* * *

There are many cases besides those which I have mentioned which have been cited by counsel in their briefs and arguments which support the conclusions

here reached, that the Secretary of the Interior is without authority to except the fish traps of the plaintiffs from his Order dated March 7, 1959, 24 Fed. Reg. 2053-71, prohibiting the use of fish traps in Alaskan waters effective April 18, 1959; and that the State of Alaska has authority to prohibit all fish traps in Alaskan waters, including those of the plaintiffs, and the plaintiffs are not entitled to the relief here sought.

Findings of fact, if desired, may be presented, together with Judgment and Decree in accordance with this opinion.

RAYMOND J. KELLY
U.S. District Judge

Supplemental Finding of Fact No. 1

The waters of the Alexander Archipelago, State of Alaska, which lie to the landward of a line drawn from Cape Spencer lighthouse at the entrance of Cross Sound, and following generally the sinuosities of the coast, that is, the meander line of mean low water, and bridging headlands and bays as the line is drawn in a general southeasterly direction past Cape Bartholomew, Cape Muzon, and eastward through Cape Chacon and ending at a line drawn from the northernmost extremity of Pt. Mansfield, Sitklan Island, 040° true, to where it intersects the mainland, as more particularly described in 33 C.F.R. 82, 275, are all inland waters and historic bodies of water. Because of historic, social and geographic considerations, of which this court takes judicial notice, and based also on a consideration of the record in this case, I find:

That geographically and geologically the Alexander Archipelago is part of a long mountain range which extends from the southern tip of the so-called Panhandle of Alaska's general land mass in a northwesterly direction, and includes the St. Elias Mountains, the Wrangell Mountains, and the Talkeetna Mountains in Southcentral Alaska.

That the main mass of igneous rocks which intruded the older sediments forms the core of this general land mass. The resulting topography, formed by erosion of the complex fault patterns and contacts between different rock types, and a later partial inundation, is a series of long, narrow arms of the sea, which have encroached upon the general land mass without actually altering its original coastline facing the open sea.

That the general land mass of the Alexander Archipelago retains its mountain-range character with elevations ranging from 2,000 to 6,000 feet, and that the present arms of the sea were at one time river valleys which have been eroded by glacial action, creating the long, narrow fjords which exist today as inland waterways, the only substantial means of surface transportation throughout the Archipelago.

That the historical economy of the area involved is primarily oriented to a marine way of life in which the 10—The Argus Press for Briefs 3211 FN 8-13—95507 inland waters furnish the primary, and in many areas, the only industry. Said waters are in every respect a necessary and intimate part and parcel of the territory of the State of Alaska.

Supplemental Finding of Fact No. 2

Although plaintiff may suffer some loss if the right to fish by means of fish traps is denied, still I find that the damages alleged are to a large extent speculative in nature because of (1) the limited predictability of the salmon runs, (2) the existence of an independent fleet of seine boats with whom plaintiffs are free to bid for their catch on the basis of the price offered therefor, and (3) the possibility of increased catches by plaintiffs' own seine boats resulting from the abolition of fish traps.

Supplemental Finding of Fact No. 3

The Court judicially notices that fish traps, whether of the floating or pile-driven variety, are customarily affixed to the shoreline with the remainder necessarily extending out over tidelands and beyond into the navigable waters below the meander line of mean low tide.

APPENDIX 2

JUDGMENT OF THE DISTRICT COURT FOR THE STATE OF ALASKA

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
DIVISION NUMBER ONE, AT JUNEAU

ORDER FOR DISMISSAL

In the matter of the METLAKATLA INDIAN COMMUNITY, *Plaintiff,* vs. WILLIAM A. EGAN, *Defendant.*	No. 8066-A

THIS MATTER having come on before the Court for final hearing on plaintiff's complaint for a permanent injunction on the 29th day of June, 1959; plaintiff appearing through its counsel, Robert H. Ziegler, and defendant appearing through its counsel, the Attorney General for the State of Alaska, and the Court having heard oral argument and having rendered its opinion, which opinion with supplemental findings of fact is in lieu of findings of fact and conclusions of law,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the complaint of the plaintiff be and it hereby is dismissed with prejudice.

WITNESS my hand and seal of this honorable Court this 2nd day of July, 1959.

/s/ RAYMOND J. KELLY
District Judge

APPENDIX 3

STATUTES INVOLVED

43 Stat. 464, 48 USC 221 (1924)

Fishing areas, closed season, limitation on fishing.

For the purpose of protecting and conserving the fisheries of the United States in all waters of Alaska the Secretary of the Interior from time to time may set apart and reserve fishing areas in any of the waters of Alaska over which the United States has jurisdiction, and within such areas may establish closed seasons during which fishing may be limited or prohibited as he may prescribe. Under this authority to limit fishing in any area so set apart and reserved the Secretary may (a) fix the size and character of nets, boats, traps, or other gear and appliances to be used therein, (b) limit the catch of fish to be taken from an area; (c) make such regulations as to time, means, methods, and extent of fishing as he may deem advisable.

43 Stat. 464, 48 USC 222 (1924)

Unlawful fishing in areas no exclusive rights to be granted citizens.

From and after the creation of any such fishing area and during the time fishing is prohibited therein it shall be unlawful to fish therein or to operate therein any boat, seine, trap, or other gear or apparatus for the purpose of taking fish, and from and after the creation of any such fishing area in which limited fishing is permitted such fishing shall be carried on only with such rules and regulations as the Secretary prescribes under the authority herein given: *Provided,* That every such regulation made by the Secretary of the Interior shall

be of general application within the particular area to which it applies and that no exclusive or several right of fishery shall be granted therein nor shall any citizen of the United States be denied the right to take, prepare, cure, or preserve fish or shellfish in any area of the waters of Alaska where fishing is permitted by the Secretary of the Interior.

72 Stat. 339 (1958) Alaska Statehood Act

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled. That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 8 (c) of this Act, the State of Alaska is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska, to submit the constitution to the people for adoption or rejection, to prepare for the admission of Alaska as a State, to make an appropriation, and setting an effective date, approved March 19, 1955 (Chapter 46, Session Laws of Alaska 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

Sec. 2. The State of Alaska shall consist of all territory together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

* * * *

Sec. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives); or is held by the United States in trust for said natives that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation . . .

Sec. 6 (e). All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U.S.C., secs. 192-211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478, 48 U.S.C. secs. 230-239 and 241-242), and June 6, 1924 (43 Stat. 465; 48 U.S.C. secs. 221-228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: Provided, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws

until the first day of the first calendar year following the expiration of ninety legislative days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest . . .

Sec. 6 (m). The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session, 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

Sec. 8 (b). At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:

"(1) Shall Alaska immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Alaska shall be prescribed in the Act of Congress approved (date of approval of this Act) and all claims of this state to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved (date of approval of this Act) reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."

In the event each of the foregonig propositions is adopted at said election by a majority of the legal votes

cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission the provisions of this Act shall thereupon cease to be effective.

Sec. 30. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

67 Stat. 29, 43 USC 1301 (1953)

Sec. 2. When used in this Act—(a) The term "lands beneath navigable waters" means—

(1) all lands within the boundaries of each of the respective States which are covered by nontidal waters that were navigable under the laws of the United States at the time such State became a member of the Union, or acquired sovereignty over such lands and waters thereafter, up to the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction;

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each such State and to the boundary line of each such State where in any case such boundary as it existed at the time such State became a member of the Union, or as heretofore approved by Congress, extends seaward (or into the Gulf of Mexico) beyond three geographical miles, and

(3) all filled in, made, or reclaimed lands which for-

merly were lands beneath navigable waters, as hereinabove defined.

* * * *

(e) The term "natural resources" includes, without limiting the generality thereof, oil, gas and all other minerals, and fish, shrimp, oysters, clams, crabs, lobsters, sponges, kelp and other marine animal and plant life but does not include water power, or the use of water for the production of power.

* * * *

67 Stat. 30, 43 USC 1311

Sec. 3. Rights of the States—

(a) It is determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law, be, and they are, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof.

67 Stat. 29, 43 USC 1313 (a), (b):

Exceptions from confirmation and establishment of States' title, power and rights.

There is excepted from the operation of Section 1311 of this title—

(a) all tracts or parcels of land together with all accretions thereto, resources therein, or improvements thereon, title to which has been lawfully and expressly acquired by the United States from any State or from any person in whom title had vested under the law of the State or of the United States, and all lands which the United States lawfully holds under the law of the State; all lands expressly retained by or ceded to the United States when the State entered the Union (otherwise than by a general retention or cession of lands underlying the marginal sea); all lands acquired by the United States by eminent domain proceedings, purchase, cession, gift, or otherwise in a proprietary capacity; all lands filled in, built up, or otherwise reclaimed by the United States for its own use, and any rights the United States has in lands presently and actually occupied by the United States under claim of right;

(b) such lands beneath navigable waters held, or any interest in which is held by the United States for the benefit of any tribe, band, or group of Indians or for individual Indians.

Constitution of the State of Alaska, Article XII, Section 12

The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States, or subject to its disposition, and not granted or confirmed to the State or its political subdivisions, by or under the act admitting Alaska to the Union. The State and its people further disclaim all right or title in or to any property, including fishing rights, the right or title to which may be held by or for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The State and its people agree that, unless otherwise

provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, unless otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

48 USC 358:

"Until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in southeastern Alaska on the north side of Dixon's entrance, is set apart as a reservation for the use of the Metlakatla Indians, and those people known as Metlakatlans who, on March 3, 1891, had recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior."

Title 43, USC 141:

"The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry of any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

Order of the Secretary of the Interior bearing date of February 11, 1915:

"Department of the Interior,
Bureau of Education,

Washington. February 9, 1915.

Dear Mr. Secretary: Under the provisions of the act of March 3, 1891, setting apart Annette Islands, Alaska, for use in common by the Metlakahtlans, under such rules, regulations and restrictions as may be prescribed from time to time by the Secretary of the Interior, I respectfully recommend: (1) That, until otherwise ordered by the Secretary of the Interior, natives or associations of natives of Metlakahtla who have secured the approval of the council of the Annette Islands reserve be given permits by the Secretary of the Interior to erect salmon traps on the shores of Annette Island, on condition that they pay to the Secretary of the Annette Islands reserve, at the close of each fishing season, a yearly tax of $25 for each trap; (2) that permits be given by the Secretary of the Interior to natives of Metlakahtla to cut timber on the Annette Islands reserve for lumber and piling on condition that they pay to the secretary of the Annette Islands reserve $1.00 per thousand board feet for all logs sold away from the reserve and fifty cents (50c) per thousand board feet for all logs to be used for lumber or piling on the reserve; and (3) that 10 per cent of all money paid to the secretary of the Annette Islands reserve for timber and salmon traps shall be used for medical and school work on the reserve under the direction of the commissioner of education. The balance of all funds paid to the secretary of the Annette Islands reserve as fees on timber and salmon traps shall

revert to the general fund of the reserve for such uses as the council may direct.

The above recommendations are based upon the inclosed letters from Mr. C. D. Jones, teacher of the United States public school at Metlakahtla, and Mr. W. T. Lopp, chief of the Alaska division of the Bureau of Education, also upon information furnished me by Mr. Lopp.

Cordially yours, (Signed) P. P. Claxton, Commissioner. The Honorable the Secretary of the Interior. Approved Feb. 11, 1915. (Signed) Franklin K. Lane, Secretary."

Presidential Proclamation No. 1332, April 28, 1916:

Presidential Proclamation No. 1332, bearing date of April 28, 1916:

"Annette Island Fishery Reserve, Alaska. By the President of the United States of America:

A Proclamation,

No. 1332

Whereas, it is provided by section fifteen of the Act of Congress approved March third, eighteen hundred and ninety-one, entitled, "An act to repeal timber culture laws, and for other purposes," that "until otherwise provided by law, the body of lands, * * * in Southeastern Alaska, on the north side of Dixon's Entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakahtla Indians, and those people known as Metlakahtlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may (be)

prescribed from time to time by the Secretary of the Interior"; and

Whereas, the Secretary of the Interior, with a view to assisting the Metlakahtlans to self-support, has decided to place in operation a cannery on Annette Island; and

Whereas, it is therefore necessary that the fishery in the waters contiguous to the hereinafter described group comprising the Annette Islands be reserved for the purpose of supplying fish and other aquatic products for said cannery:

Now, therefore, I, Woodrow Wilson, President of the United States of America, by virtue of the power in me vested by the laws of the United States, do hereby make known and proclaim that the waters within three thousand feet from the shore lines at mean low tide of Annette Island, Ham Island, Walker Island, Lewis Island, Spire Island, Hemlock Island and the adjacent rocks and islets, located within the area segregated by the broken line upon the diagram hereto attached and made a part of this proclamation, also the bays of said islands, rocks, and islets, are hereby reserved for the benefit of the Metlakahtlans and such other Alaskan natives as have joined them or may join them in residence on those islands, to be used by them under the general fisheries laws and regulations of the United States as administered by the Secretary of Commerce.

Warning is hereby expressly given to all unauthorized persons not to fish in or use any of the waters herein described or mentioned.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 28th day of

April, in the year of our Lord one thousand nine hundred and sixteen, and of the independence of the United States the one hundred and fortieth.

Woodrow Wilson.
By the President:

Robert Lansing, Secretary of State."

24 FR 2053, 2056, Section 102.10:

Types of gear permitted, salmon fishing. In fishing for salmon all forms of gear other than drift gill nets, set nets, purse seines, beach seines, fish wheels, trolling apparatus, hand lines, rods, spears, and gaffs are prohibited at all times. Traps are prohibited, except native Indian-owned traps specifically authorized in Part 115.

Section 115.26:

Sites open to native Indian traps:

Salmon traps owned and operated by native Indian communities may be operated in 1959 at the following sites:

(a) *Annette Island Fishery Reserve*

(1) Annette No. 3, located at 55°02′47″ N. lat., 131° 38′53″ W. long.

(2) Annette No. 4, located at 55°05′47″ N. lat., 131° 36′39″ W. long.

(3) Annette No. 6, located at 55°00′45″ N. lat., 131° 38′30″ W. long.

(4) Annette No. 8, located at 55°10′13″ N. lat., 131° 19′31″ W. long.

(b) *Organized Village of Kake*

(1) Kake-Cape Fanshaw, located at 57°10′52″ N. lat., 133°32′44″ W. long.

(2) Kake-Point Pybus, located at 57°18′40″ N. lat., 133°57′21″ W. long.

(3) Kake-Point Mccartney, located at 57°01′23″ N. lat., 134°02′50″ W. long.

(4) Kake-Cornwallis, located at 56°55′52″ N. lat., 134°16′08″ W. long.

(c) *Angoon Community Association*

(1) Angoon-Basket Bay, located at 57°36′16″ N. lat., 134°51′34″ W. long.

(2) Angoon-Eagle Island, located at 57°22′28″ N. lat., 134°34′18″ W. long.

(3) Angoon-Point Caution, located at 57°13′52″ N. lat., 134°39′05″ W. long.

1959 Session Laws of Alaska, Chapter 17

Section 1. It shall be unlawful to erect, moor or maintain fish traps, including but not limited to floating, pile driven or hand driven fish traps, on or over any lands or tidelands owned or hereafter acquired by the State of Alaska. Nothing in this section shall prevent the maintenance, use or operation of small, hand-driven fish traps of the type ordinarily used on rivers of Alaska which are otherwise legally maintained and operated in or above the mouth of any stream or river in Alaska.

* * * *

Section 3. A violation of this Act shall be a misdemeanor and shall be punishable by imprisonment not to exceed six months or by fine not to exceed $1,000 or by both such fine and imprisonment.

1959 Session Laws of Alaska, Chapter 95

Section 1. It shall be unlawful to operate fish traps,

including but not limited to floating, pile-driven or hand-driven fish traps in the State of Alaska on or over any of its lands, tidelands, submerged lands, or waters provided nothing in this section shall prevent the operation of small hand-driven fish traps of the type ordimarily used on rivers of Alaska which are otherwise legally operated in or above the mouth of any stream or river in Alaska; nor shall this Act be construed so as to violate Sec. 4 of Public Law 85-508, 72 Stat. 339, which constitutes a compact between the United States and Alaska, pursuant to which the State disclaims all right and title to any lands or other property (including fishing rights) the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called Natives) or is held by the United States in trust for said Natives.

Section 2. Section 1 of Chapter 17 SLA, 1959, is hereby amended to read as follows:

Section 1. It shall be unlawful to erect, moor or maintain fish traps, including but not limited to floating, pile-driven or hand-driven fish traps, on or over any lands, tidelands, submerged lands or waters, owned or hereafter acquired by the State of Alaska. Nothing in this section shall prevent the maintenance, use or operation of small, hand-driven fish traps of the type ordinarily used on rivers of Alaska, which are otherwise legally maintained and operated in or above the mouth of any stream or river in Alaska.

Sec. 3. Sec. 2 of Chapter 17, SLA 1959, is hereby repealed.

Sec. 4. Sec. 3 of Chapter 17, SLA 1959, is hereby amended to read as follows:

Sec. 3. A violation of this Act shall be a misdemeanor and shall be punishable by imprisonment not to exceed

one year or by fine not to exceed $5,000.00 or by both such imprisonment and fine.

Sec. 5. A violation of this act shall be a misdemeanor and shall be punishable by imprisonment not to exceed one year or by a fine not to exceed $5,000.00, or by both such imprisonment and fine.

1957 Session Laws of Alaska, Chapter 170

Section 1. Any person or corporation having any claim against the Territory of Alaska shall have a right of civil action against the Territory in the District Court for the District of Alaska.

Section 7. *Exceptions.* The provisions of this Act shall not apply to:

(1) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a territorial agency or an employee of the Territory, whether or not the discretion involved be abused.

48 Stat. 985, 25 USC 465 (1934)

The Secretary of the Interior is hereby authorized in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

* * * *

Title to any lands or rights acquired pursuant to sections 461, 462, 463, 464-473, 474, 475, 476-478, and 479 of this title shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

73 Stat. 141 (1959)

Sec. 2 (a). Section 4 of the Act of July 7, 1958 (72 Stat. 339) providing for the admission of the State of Alaska into the Union, is amended by striking out the words "all such lands or other property, belonging to the United States or which may belong to said natives" and inserting in lieu thereof the words "all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for natives.

(b) Section 6 (e) of said Act is amended by striking cut the word legislative and inserting in lieu thereof the word "calendar."

72 Stat. 545, 18 USC 1162:

State jurisdiction over offenses committed by or against Indians in the Indian country.

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian Country Affected*
Alaska	All Indian country within the Territory
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof."

62 Stat. 757, 18 USC 1151:

Indian country defined.

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country," as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issu-

ance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within on without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."